

## § 101.415

- (3) Detention of the vessel;
- (4) Restriction of vessel operations;
- (5) Denial of port entry;
- (6) Expulsion from port;
- (7) Lesser administrative and corrective measures; or

(8) Suspension or revocation of a security plan approved by the U.S., thereby making that vessel ineligible to operate in, on, or under waters subject to the jurisdiction of the U.S. in accordance with 46 U.S.C. 70103(c)(5).

(c) Control and compliance measures for facilities not in compliance with this subchapter may include, but are not limited to, one or more of the following:

- (1) Restrictions on facility access;
- (2) Conditions on facility operations;
- (3) Suspension of facility operations;
- (4) Lesser administrative and corrective measures; or

(5) Suspension or revocation of security plan approval, thereby making that facility ineligible to operate in, on, under or adjacent to waters subject to the jurisdiction of the U.S. in accordance with 46 U.S.C. 70103(c)(5).

(d) Control and compliance measures under this section may be imposed on a vessel when it has called on a facility or at a port that does not maintain adequate security measures to ensure that the level of security to be achieved by this subchapter has not been compromised.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003]

## § 101.415 Penalties.

(a) *Civil and criminal penalty.* Violation of any order or other requirement imposed under section 101.405 of this part is punishable by the civil and criminal penalties prescribed in 33 U.S.C. 1232 or 50 U.S.C. 192, as appropriate.

(b) *Civil penalty.* As provided in 46 U.S.C. 70119, any person who does not comply with any other applicable requirement under this subchapter, including a Maritime Security Directive, shall be liable to the U.S. for a civil penalty of not more than \$ 25,000 for each violation. Enforcement and ad-

## 33 CFR Ch. I (7-1-10 Edition)

ministration of this provision will be in accordance with 33 CFR 1.07.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended by USCG-2008-0179, 73 FR 35009, June 19, 2008]

## § 101.420 Right to appeal.

(a) Any person directly affected by a decision or action taken by a COTP under this subchapter, may appeal that action or decision to the cognizant District Commander according to the procedures in 46 CFR 1.03-15.

(b) Any person directly affected by a decision or action taken by a District Commander, whether made under this subchapter generally or pursuant to paragraph (a) of this section, with the exception of those decisions made under § 101.410 of this subpart, may appeal that decision or action to the Commandant (CG-54), according to the procedures in 46 CFR 1.03-15. Appeals of District Commander decisions or actions made under § 101.410 of this subpart should be made to the Commandant (CG-543), according to the procedures in 46 CFR 1.03-15.

(c) Any person directly affected by a decision or action taken by the Commanding Officer, Marine Safety Center, under this subchapter, may appeal that action or decision to the Commandant (CG-54) according to the procedures in 46 CFR 1.03-15.

(d) Decisions made by Commandant (CG-54), whether made under this subchapter generally or pursuant to the appeal provisions of this section, are considered final agency action.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003; 68 FR 62502, Nov. 4, 2003; USCG-2008-0179, 73 FR 35009, June 19, 2008]

## Subpart E—Other Provisions

### § 101.500 Procedures for authorizing a Recognized Security Organization (RSO). [Reserved]

### § 101.505 Declaration of Security (DoS).

(a) The purpose of a DoS, as described in SOLAS Chapter XI-2, Regulation 10, and the ISPS Code (Incorporated by reference, see § 101.115), is to state the agreement reached between a vessel and a facility, or between vessels in the

case of a vessel-to-vessel activity, as to the respective security measures each must undertake during a specific vessel-to-facility interface, during a series of interfaces between the vessel and the facility, or during a vessel-to-vessel activity.

(b) Details as to who must complete a DoS, when a DoS must be completed, and how long a DoS must be retained are included in parts 104 through 106 of this subchapter. A DoS must, at a minimum, include the information found in the ISPS Code, part B, appendix 1 (Incorporated by reference, see § 101.115).

(c) All vessels and facilities required to comply with parts 104, 105, and 106 of this subchapter must, at a minimum, comply with the DoS requirements of the MARSEC Level set for the port.

(d) The COTP may also require a DoS be completed for vessels and facilities during periods of critical port operations, special marine events, or when vessels give notification of a higher MARSEC Level than that set in the COTP's Area of Responsibility (AOR).

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003]

#### § 101.510 Assessment tools.

Ports, vessels, and facilities required to conduct security assessments by part 103, 104, 105, or 106 of this subchapter may use any assessment tool that meets the standards set out in part 103, 104, 105, or 106, as applicable. These tools may include:

(a) DHS/TSA's vulnerability self-assessment tool located at <http://www.tsa.gov/risk>; and

(b) USCG assessment tools, available from the cognizant COTP or at <http://www.uscg.mil/hq/g-m/nvic>, as set out in the following:

(1) Navigation and Vessel Inspection Circular titled, "Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports" (NVIC 9-02 change 2);

(2) Navigation and Vessel Inspection Circular titled, "Security Guidelines for Vessels", (NVIC 10-02 change 1); and

(3) Navigation and Vessel Inspection Circular titled, "Security Guidelines for Facilities", (NVIC 11-02 change 1).

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003; USCG-2008-0179, 73 FR 35009, June 19, 2008]

#### § 101.514 TWIC Requirement.

(a) All persons requiring unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105 or 106 of this subchapter must possess a TWIC before such access is granted, except as otherwise noted in this section. A TWIC must be obtained via the procedures established by TSA in 49 CFR part 1572.

(b) Federal officials are not required to obtain or possess a TWIC. Except in cases of emergencies or other exigent circumstances, in order to gain unescorted access to a secure area of a vessel, facility, or OCS facility regulated by parts 104, 105 or 106 of this subchapter, a federal official must present his/her agency issued, HSPD 12 compliant credential. Until each agency issues its HSPD 12 compliant cards, Federal officials may gain unescorted access by using their agency's official credential. The COTP will advise facilities and vessels within his or her area of responsibility as agencies come into compliance with HSPD 12.

(c) Law enforcement officials at the State or local level are not required to obtain or possess a TWIC to gain unescorted access to secure areas. They may, however, voluntarily obtain a TWIC where their offices fall within or where they require frequent unescorted access to a secure area of a vessel, facility or OCS facility.

(d) Emergency responders at the State, or local level are not required to obtain or possess a TWIC to gain unescorted access to secure areas during an emergency situation. They may, however, voluntarily obtain a TWIC where their offices fall within or where they desire frequent unescorted access to a secure area of a vessel, facility or OCS facility in non-emergency situations.

(e) Before April 15, 2009, mariners do not need to obtain or possess a TWIC but may be provided unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts